

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RAYMOND BROWN,

Plaintiff,

v.

Case No. 07-14955

BLAINE LAFLER, BARBARA MEAGHER,
MICHAEL OLSON, SAMUEL TEED, ROSALIE
PERRY, MARIA ORTH, BETH DAVIS, MARY
GRAHEK, and REBEKAH SOMMERVILLE,

HON. AVERN COHN

Defendants.

ORDER
ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
AND
DENYING DEFENDANT BETH DAVIS' MOTION TO DISMISS AND/OR FOR SUMMARY
JUDGMENT FOR LACK OF EXHAUSTION
AND
DISMISSING DEFENDANT REBEKAH SOMMERVILLE *SUA SPONTE* FOR LACK OF
SERVICE

I.

This is a prisoner civil rights case under 42 U.S.C. § 1983. Plaintiff Raymond Brown, a state inmate proceeding pro se, sued several defendants claiming that they were deliberately indifferent to his serious medical needs. Specifically, plaintiff says that defendants failed to clear the ice from prison walkways causing him to fall and break his leg and for which he received inadequate medical care. He makes claims for failure to provide a safe environment¹ and for violation of the Eighth Amendment due to deliberate indifference to his serious medical needs. The matter was referred to a magistrate judge

¹On November 13, 2008, the Court adopted the magistrate judge's recommendation that plaintiff's failure to provide a safe environment claim be dismissed. Thus, this claim is no longer part of the case.

for all pretrial proceedings. Thereafter, defendant Beth Davis filed a motion to dismiss or for summary judgment on the grounds that plaintiff had failed to exhaust his administrative remedies.²

On December 5, 2008, the magistrate judge issued a report and recommendation (MJRR) recommending that the motion be denied. The magistrate judge also recommends that defendant Rebekah Sommerville be dismissed sua sponte because she has never been served and no good cause exists for excusing the lack of service.

II.

Neither party has filed objections to the MJRR and the time for filing objections has passed.³ Accordingly, the findings and conclusions of the magistrate judge are adopted as the findings and conclusions of the Court. Defendant Beth Davis' motion to dismiss or for summary judgment is DENIED. Defendant Rebekah Sommerville is DISMISSED sua sponte for lack of service. Plaintiff's claim against defendants Lafler, Meager, Olson, Teed, Petty, Orth, Davis, and Grahek for violation of the Eighth Amendment continues, subject to any dispositive motions defendants may file.

SO ORDERED.

Dated: December 19, 2008

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

²Defendants Lafler, Meager, Olsen, Teed, Petty, Orth, Grahek, Davis and Sommerville filed a separate motion to dismiss or for summary judgment on the grounds that plaintiff failed to exhaust his administrative remedies. The magistrate judge recommended the motion be denied. Defendants objected. On November 13, 2008, the Court issued an order adopting the magistrate judge's recommendation.

³On December 14, 2008, plaintiff filed a paper styled a "Response" to the MJRR in which he essentially says he agrees with the magistrate judge's recommendation.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed to Raymond Brown 428924, Boyer Road Correctional Facility, 10274 Boyer Road, Carson City, MI 48811 and the attorneys of record on this date, December 19, 2008, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160